

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 SAJ-01 ACDA-19 IO-14 NIC-01 CIAE-00

DODE-00 PM-07 INR-10 L-03 NSAE-00 NSC-10 PA-04 RSC-01

PRS-01 SPC-03 SS-20 USIA-15 EURE-00 DRC-01 /136 W

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FM USMISSION BERLIN

TO AMEMBASSY BONN PRIORITY

INFO SECSTATE WASHDC PRIORITY 3055

C O N F I D E N T I A L BERLIN 378

E.O. 11652: GDS

TAGS: PGOV, WB, GE, GW

SUBJECT: INGRID BRUECKMANN CASE

REF: A) BERLIN 353; B) STATE 36930; C) BERLIN 337

1. ANALYSIS AND RECOMMENDATIONS ON BRUECKMANN CASE
CONTAINED PARAS 2-5 BELOW WERE DEVELOPED TRIPARTITELY
BY MISSION LEGAL ADVISORS, AND HAVE BEEN CLEARED BY
BRITISH AND FRENCH MISSIONS.

ACTION RECOMMENDED: THAT EMBASSY DETERMINE
IN BONN WHETHER ALLIED EMBASSIES PREPARED TO FOLLOW
SUGGESTED COURSE OF ACTION.

2. MISSING PIECE IN OUR INFORMATION IS EXPLANATION
FROM FOREIGN OFFICE OF KARLSRUHE'S REAL INTENTIONS,
I.E., WHETHER FEBRUARY 15 PAPER DELIVERED TO BONN GROUP WAS
FALSE ALARM OR ACCURATE REPRESENTATION OF COURT'S
OBJECTIVE. WE SUGGEST THAT EMBASSIES ADVISE FOREIGN OFFICE:

(A) WE WISH CLARIFICATION OF COURT'S INTENTIONS.
WE BELIEVE FOREIGN OFFICE CAN USE PARAGRAPH OF 1967 AIDE MEMOIRE
AS VEHICLE TO OBTAIN COURT'S VIEW IF COURT IS NOT WILLING TO
COOPERATE ON MORE INFORMAL BASIS.

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(B) IN ABSENCE OF SATISFACTORY CLARIFICATION, EMBASSIES WOULD SEND FURTHER AIDE MEMOIRE TO FOREIGN OFFICE REQUESTING IT ON BASIS OF FINAL PARAGRAPH OF 1967 AIDE MEMOIRE TO BRING TO COURT'S ATTENTION LEGAL VIEWS EXPRESSED BY ALLIES IN 1967 AIDE-MEMOIRE SO THAT THESE WOULD BE AVAILABLE FOR COURT'S CONSIDERATION WITH RESPECT TO APPEAL THAT WE UNDERSTAND BRUECKMANN HAS FILED. NEW AIDE MEMORE MIGHT ALSO NOTE THAT AK HAD IN JULY 1973 SPECIFICALLY REJECTED REQUEST FROM BRUECKMANN'S LAWYER THAT IT MAKE EXCEPTION TO ITS POSITION AND PERMIT HER TO APPEAL CASE TO CONSTITUTIONAL COURT.

(C) CONCURRENTLY, AK WOULD ISSUE INSTRUCTION TO SENAT REQUIRING IT, PURSUANT TO BK/L(67)10 TO SUBMIT ALLIED VIEWS ON LEGAL SITUATION CONTAINED BK/L(67)10 TO KARLSRUHE, AND INSTRUCTING SENAT THAT IT MAY SEND WITH THOSE VIEWS ONLY COPY OF KAMMERGERICHT DECISION AND ORDER FOR PURPOSE OF DEMONSTRATING THAT CASE IS INDEED BERLIN CASE.

3. INASMUCH AS TIME ELEMENT IS OF SOME CONCERN (AND IN PARTICULAR BECUASE OF DESIRE TO HAVE MATTER RESOLVED BEFORE APPEAL BECOMES PUBLIC KNOWLDGE AND BEFORE STRASBOURG COMMISSION TAKES ITS DECISION), STEPS B AND C SHOULD BE TAKEN BY THE END OF NEXT WEEK (MARCH 8) IF SATISFACTORY CLARIFICATION IS NOT RECEIVED.

4. MEANWHILE, INSTRUCTION GIVEN TO SENAT NOT TO SEND DOCUMENTS RELATING TO CASE TO KARLSRUHE WILL STAND.

5. IF CLARIFICATION CONFIRMS OUR FEARS ABOUT THE COURT'S INTENTIONS, WE WOULD SUGGEST THAT, IN ADDITION TO STEPS B AND C ABOVE (WHICH WOULD BE TAKEN IMMEDIATELY), BONN GROUP DETERMINE WHETHER FRG CAN INFORMALLY TAKE ANY OTHER HELPFUL STEPS WITH THE COURT.

6. IF EMBASSIES ARE PREAPRED TO FOLLOW COURSE OF ACTION SET OUT IN PARAGRAPH 2 ABOVE, WE BELIEVE IT WOULD BE USEFUL FOR MISSIONS TO SPEAK ALONG SIMILAR LINES TO SENAT.

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7. FRENCH MISSION ADVISES US THAT IT IS CONSIDERED PROBABLY THAT STRASBOURG HUMAN RIGHTS COMMISSION WILL MAKE AT LEAST PRELIMINARY RULING ON BRUECKMANN APPEAL IN MARCH OR APRIL. THAT RULING COULD EITHER BE TO DISMISS CASE OUT OF HAND OR TO FIND PRIMA FACIE GROUNDS FOR COMPLAINT AND TO REQUIRE PARTIES TO SUBMIT FURTHER MATERIAL. IF COMMISSION FINDS PRIMA FACIE GROUNDS FOR COMPLAINT, IT WOULD SEEK TO EXHAUST POSSIBILITIES FOR COMPROMISE BEFORE REFERRING MATTER TO STRASBOURG

COURT, WHICH COULD HAND DOWN BINDING DECISION. THUS, IF COMMISSION DOES NOT REJECT MATTER OUT OF HAND, CASE COULD -- AS NOTED REFTEL C -- DRAG ON IN STRASBOURG FOR MANY MONTHS.

8. AS WE HAVE REPORTED, THERE IS THEORETICAL THOUGH NOT VERY LIKELY POSSIBILITY THAT STRASBOURG COURT WOULD EVENTUALLY OVERRULE KAMMERGERICHT AND VOID BERLIN AUTHORITIES' DECISION TO TURN BRUECKMANN OVER TO GDR. WERE THIS TO HAPPEN, GDR WOULD NO DOUBT OBJECT, BUT WE WOULD SEE NO REASON FOR ALLIES TO INTERFERE, SINCE FRG EXTENSION OF CONVENTION FOR PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING ACCEPTANCE OF BINDING JURISDICTION OF COURT, WAS EXTENDED TO BERLIN WITHOUT RESERVATION. DECISION ON MERITS BY STRASBOURG COURT WOULD BE OF WHOLLY DIFFERENT NATURE THAN DECISION BY FRG CONSTITUTIONAL COURT, GIVEN LONG HISTORY OF ALLIED RESISTANCE TO CONSTITUTIONAL COURT JURISDICTION
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